

From: [King, Christopher \(Law\)](#)
To: [Carr, Brian](#)
Subject: RE: Draft Gowanus AOC - City Comments
Date: Tuesday, December 01, 2015 5:22:35 PM

Hi Brian:

Apologies, but it is taking a little longer than expected to get our comments on the Schedule together. I will do my best to get them to you tomorrow afternoon.

CK

From: King, Christopher (Law)
Sent: Monday, November 30, 2015 7:28 PM
To: 'Carr, Brian'
Cc: Robert Fox; 'Levine, Robin'
Subject: Draft Gowanus AOC - City Comments

Brian:

As promised during our meeting of November 13th attached are the City's comments to EPA's draft Settlement Agreement. As you will note from our comments we have made the following substantive and significant changes to EPA's draft as follows:

1. We have modified the Order to provide that EPA is directing and selecting the Canal-side property for the siting of the RH-034 tank and the property that DEP has identified for staging of tank construction, with the acknowledgement that if we fail to acquire the Canal-side property we may be directed to the Park Property.
2. The Order is contingent upon and pre-supposes that EPA will enter into a Consent Order or UAO with National Grid requiring Grid to address MGP contamination on both the Canal-side and Park Properties (and to the extent necessary the Staging Area Property), and to finance Park restoration and temporary park relocation. Since issuance of the ROD, the City and EPA have had many conversations regarding Grid's responsibility for remediating MGP contamination at both the Canal-side Property and the Park Property. EPA has consistently confirmed that Grid will be responsible for performing that work and for "digging the hole" at whatever site is chosen for the CSO tank. The revisions the City proposes simply reflects that understanding and makes certain that the City will have no responsibility for the costs related to MGP contamination. At the same time, the revisions are drafted so that to the extent Grid incurs costs at these properties unrelated to the MGP contamination, it retains its claims, if any, against any other party.
3. The Agreement sets forth EPA's determination that Tank Siting on the Canal-side property is not subject to ULURP or SEQRA/CEQR
4. The Covenant not to Sue is limited to claims arising from the work required by the Order. That applies both to the protections the City is receiving and the rights the City is relinquishing. As the result, the City is not waiving any and all challenges to the validity of the ROD, which goes well beyond the intended scope of this order.
5. The Force Majeure provision has been cut back so as to acknowledge that the City

may be forced to litigate the Tank Siting, particularly a claim under ULURP or SEQRA and that delays in acquiring the property due to that litigation may be beyond the City's control.

There are several other changes that we think are fairly straightforward and that we hope EPA will find acceptable that we can discuss at our meeting on Friday. We look forward to discussing all of our comments with you and your team then. Lastly, please note that we have not included comments to the Schedule (attachment B). I will send the City's comments to that document tomorrow.

Best,

CK

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